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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,937	08/27/2001	Rui M. Amorin	D/A0941 (1508/3320)	8656
7590	01/10/2006			EXAMINER AILES, BENJAMIN A
Gunnar G. Leinberg, Esq. Nixon Peabody LLP Clinton Square P.O. Box 31051 Rochester, NY 14603-1051			ART UNIT 2142	PAPER NUMBER
DATE MAILED: 01/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,937	AMORIN ET AL.	
	Examiner	Art Unit	
	Benjamin A. Ailes	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 October 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 19-30 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 May 2005 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

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DETAILED ACTION

1. This action is in response to the "Response to Restriction Requirement" filed 13 October 2005 and the "Amendment" filed 06 May 2005, specifically the "REMARKS" section.
2. Claims 1-18 remain pending. Claims 19-30 have been withdrawn from consideration.

Election/Restrictions

3. Applicant's election with traverse of Group I (Claims 1-18) in the reply filed on 13 October 2005 is acknowledged. The traversal is on the ground(s) that the claims require common areas of search and consideration. This is not found persuasive because Group I (Claims 1-18) is directed towards the establishment of a connection between a device and a server while Group II (Claims 19-30) is directed towards the configuration of devices, how they are connected to each other, and how they connect to a base unit. The Examiner maintains that Group I and Group II are related as subcombinations disclosed as usable together in a single combination and they are in fact distinct from each other because they can be shown to be separately usable.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

4. The drawings were received on 06 May 2005. These drawings are in conformance. The objections made under 37 CFR 1.84(p)(5) have been withdrawn.

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Specification

5. The amendments made to the specification have been entered into the record.

The objections made because of minor informalities have been withdrawn.

Claim Objections

6. The amendment to claim 18 has been entered into the record. The prior objections to claim 4 and claim 18 have been withdrawn.

Claim Rejections - 35 USC § 112

7. The amendments to claim 7 have been entered into the record. The prior 112 second paragraph rejection placed on claims 7-12 has been withdrawn. As noted above, claims 19, 23, 25, and 29 have been withdrawn from consideration, therefore the 112 second paragraph rejection made before is no longer valid.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 6, 7, 12, 13, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett (U.S. 5,872,781).

10. Regarding claim 1, Bennett discloses a method for identifying one of a plurality of communication channels for communication between one of a plurality of devices and a server, the method comprising:

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monitoring each of the plurality of communication channels (figure 2, item 34) between the plurality of devices and the server (col. 6, ll. 27-30); determining whether at least one of the plurality of communication channels is being used for the transmission link pulses by the server, wherein the presence of link pulses on one of the communication channels indicates that that particular communication channel is not currently being used for data transmission by the server and is available (col. 6, ll. 27-34); and

establishing a connection between the device and the server using one of the available communication channels determined to have the link pulses (col. 6, ll. 38-40).

11. Independent claims 7 and 13 contain similar subject matter and are rejected under the same rationale as claim 1.

12. Regarding claim 6, Bennett discloses the method further comprising providing an indication of which of the plurality of communication channels was the established communication channel for the device (col. 7, lines 18-20).

13. Claims 12 and 18 contain similar subject matter and are rejected under the same rationale as claim 6.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 2-5, 8-11, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett in view of Allmond et al. (US 5,754,552), hereinafter referred to as Allmond.

17. Regarding claim 2, Bennett does not expressly disclose that the monitoring further comprises monitoring one of the plurality of communication channels at a time for the one or more link pulses. However, Allmond discloses that it is well known that a plurality of communication channels can be monitored for link pulses in a mutually-exclusive manner, or one at a time (column 6, lines 56-57). Bennett and Allmond are analogous art because they are from the same field of endeavor of networking data devices. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Bennett's method by allowing only one communication channel to be monitored at a time, as taught by Allmond. One of ordinary skill in the art would have been motivated for doing this is to sequentially monitor the communication

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channels. Therefore it would have been obvious to combine Allmond with Bennett for the benefit of sequential monitoring to obtain the invention as specified in claim 2.

18. Claims 8 and 14 contain similar subject matter and are rejected under the same rationale as claim 2.

19. Regarding claim 3, Bennett does not explicitly disclose that the monitoring further comprises disabling the other of the plurality of communication channels while the one of the plurality of communication channels is monitored for the one or more link pulses. Allmond discloses that it is well known in the art that communication channels other than the one being monitored can be disabled (col. 6, lines 59-63). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disable Bennett's unmonitored communication channels, as taught by Allmond. The motivation for doing so would have been to prevent potential interference from the unmonitored signals. Therefore, it would have been obvious to combine Allmond with Bennett for the benefit of interference prevention to obtain the invention as specified in claim 3.

20. Claims 9 and 15 contain similar subject matter and are rejected under the same rationale as claim 3.

21. Regarding claim 4, Bennett does not explicitly disclose that the monitoring of one of the plurality of communication channels is conducted by two or more devices. Allmond discloses that it is well known in the art that one communication channel can be monitored by two devices (figure 1, items 124 and 128). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to allow one of

Bennett's communication channels to be monitored by two or more devices. The motivation for doing so would have been to allow more than one device to utilize the connection on that particular communication channel. Therefore, it would have been obvious to combine Allmond with Bennett for the benefit of connection utilization to obtain the invention as specified in claim 4.

22. Claim 10 contains similar subject matter and is rejected under the same rationale as claim 4.

23. Regarding claim 5, Bennett does not explicitly disclose that the method further comprises blocking the communication channel monitored to have the link pulses for the one device from the other devices. Allmond discloses that it is well known that the communication channel monitored to have the link pulses for a particular device can be blocked from other devices (col. 6, lines 59-63). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to allow Bennett's devices that aren't receiving link pulses to be blocked from the communication channel carrying the pulses to another device. The motivation for doing so would have been to only allow the intended device to receive the pulses. Therefore, it would have been obvious to combine Allmond with Bennett for the benefit of appropriate pulse delivery to obtain the invention as specified in claim 5.

24. Claim 11 contains similar subject matter and is rejected under the same rationale as claim 5.

25. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett in view of Patel et al. (U.S. 5,883,894), hereinafter referred to as Patel.

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26. Regarding claim 16, Bennett does not explicitly disclose that each of the devices has one of the monitoring systems. Patel discloses that it is well known that it is possible for each port to have an auto-negotiation system, which performs port monitoring (col. 4, lines 32-34). Bennett and Patel are analogous art because they are both from the same field of endeavor of network devices. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to provide each of Bennett's devices with a monitoring system, as taught by Patel. The motivation for doing so would have been to allow each of the devices to monitor the plurality of communication channels. Therefore, it would have been obvious to combine Patel with Bennett for the benefit of allowing each device to monitor communication channels to obtain the invention as specified in claim 16.

27. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett and Patel in view of Allmond.

28. Regarding claim 17, Bennett and Patel do not explicitly disclose that the system further comprises a blocking system that blocks the communication channel monitored to have the link pulses for the one device from the other devices. Allmond discloses that it is well known that the communication channel monitored to have the link pulses for a particular device can be blocked from the other devices (col. 6, lines 59-63). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to allow Bennett's devices that are not receiving link pulses to be blocked from the communication channel carrying the pulses to another device. The motivation for doing so would have been to only allow the intended device to receive the pulses.

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Therefore, it would have been obvious to combine Allmond with Bennett and Patel for the benefit of appropriate pulse delivery to obtain the invention as specified in claim 17.

Response to Arguments

Applicant's arguments filed 06 May 2005 have been fully considered but they are not persuasive. Applicant argues that Bennett, Allmond, and Patel, taken either alone or in combination, do not teach or suggest a system, method, or computer readable medium capable of establishing "a connection between the device and the server using one of the available communication channels determined to have link pulses." The Examiner respectfully disagrees. Bennett clearly discloses in column 6, lines 27-40 the use of link pulses in order for a connection to be established between a device and a server. The step of determining a protocol to be used is deemed a necessary step in the art due to the fact that when a network communication channel is being established a messaging protocol of some sort must be used. If no messaging protocol is determined and used, then there is no way a communication channel between a client device and a server could even exist. Therefore, it is concluded that Bennett does in fact teach applicant's claimed method of "establishing a connection between the device and the server using one of the available communication channels determined to have link pulses."

29. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "using the determination of link pulses on a communication channel to establish a connection", "determine availability of a communications channel", "determination of

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whether the communications channel is available”, and “detect the transmission of link pulses by the server to determine whether the communications channel is available prior to establishing a connection between a data device and the server using the communications channel”.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is determined that the Applicant is arguing beyond that which is claimed, specifically the claim limitation “establishing a connection between the device and the server using one of a available communication channels determined to have the link pulses.” As mentioned above, it has been determined that Bennett does teach the use of a connection and the determination of link pulses, therefore the claim limitation has been met.

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Conclusion

30. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Johnson et al. (U.S. 6,434,716 B1) discloses a network link tester device configured to selectively and automatically couple to a network transmit pair line or a node transmit line of a LAN port and determine available operational modes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A. Ailes whose telephone number is (571)272-3899. The examiner can normally be reached on M-F 6:30-4, IFP Work Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

baa

Beatriz Prieto
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